IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1568 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT STATE ROAD TRANSPORT CORPORATION - Petitioner(s)

Versus

MADHUSUDAN M BARIA - Respondent(s)

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Appearance :

MR HARDIK C RAWAL for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 22/08/2005

ORAL JUDGMENT

1. In this petition under Articles 226 and 227 of the Constitution of India, the petitioner – GSRTC has challenged the legality and validity of the judgment

and award passed by the Industrial Tribunal, Vadodara dated 29-5-2004 passed in Reference (IT) No.168 of 2001 in partly allowing the said reference by substituting the order of punishment imposed by the disciplinary authority from withholding of five increments with permanent future effect to withholding of two increments with permanent future effect.

2. The respondent workman was serving as the Driver and while he was on duty on 19th January, 1997 on Vadodara – Bodeli route, his bus met with an accident with one scooter and the scooter driver died on the spot and on the basis of the said charge, disciplinary inquiry came to be initiated against the respondent workman for the allegation of rash and negligent driving and the same came to be held to be proved and considering the facts and circumstances of the case, and the evidence on record, the disciplinary authority imposed punishment of withholding of five increments with permanent future effect. Being aggrieved and dissatisfied with the order passed by the disciplinary authority in

imposing the punishment of withholding of five increments with permanent future effect, it appears that the respondent workman has challenged the said order before the first appellate authority and the first appellate authority considering his past history and conduct and evidence on record, dismissed the said appeal. Thereafter, the respondent workman raised industrial dispute challenging the order of punishment imposed by the disciplinary authority which was referred to the Industrial Tribunal, Vadodara for its adjudication being Reference (IT) No.168 of 2001. The Industrial Tribunal by considering the fact that the respondent workman cannot be said to be solely responsible and negligent for the accident in question, exercised the powers under Section-11-A of the Industrial Disputes Act and substituted the order of punishment imposed by the disciplinary authority from withholding of five increments with permanent future effect to withholding of two increments with permanent future effect. Being aggrieved and dissatisfied with the judgment and award passed by the Industrial Tribunal, Vadodara dated 29.5.2004 passed in Reference (IT)

No.168 of 2001, the petitioner corporation has preferred the present special civil application under Articles 226 and 227 of the Constitution of India.

3. Shri Ashish M. Dagli, learned advocate appearing on behalf of the petitioner has vehemently submitted that when it is proved and established that the bus met with an accident with the scooter and the scooter driver lost his life and the respondent workman was driving the heavy transport vehicle – bus and that earlier also the respondent workman was punished for the similar type of misconducts and when the disciplinary authority itself has taken a lenient view by not dismissing the respondent workman and imposed the punishment of withholding of five increments with permanent future effect only, the same was not required to be interfered by the Industrial Tribunal exercising the powers under Section-11-A of the Industrial Disputes Act. It is also further submitted that in fact, due to the aforesaid accident, the Corporation was required to pay amount of Rs.1.25 Lakh towards no fault liability and the Corporation is facing claim of Rs.22.00 Lakhs

due to the aforesaid accident and therefore, it is requested to allow the present Special Civil Application.

4. Per contra, Shri J.S.Brambhatt, learned advocate appearing on behalf of the respondent workman relying upon the affidavit-in-reply filed on behalf of the respondent workman in the present Special Civil Application has submitted that on appreciation of evidence the Industrial Tribunal has come to the conclusion that the respondent workman cannot be said to be solely responsible and negligent for the accident in question and has tried to avoid the major accident as the truck was coming from the other side and accordingly, substituted the order of punishment imposed by the disciplinary authority by imposing the punishment of withholding of two increments with permanent future effect and the same is not required to be interfered and quashed and set aside by this Court in exercise of the powers under Articles 226 and 227 of the Constitution of India and therefore, it is requested to dismiss the present Special Civil Application.

5. Heard the learned advocates appearing on behalf of the parties.

6. It is not in dispute that the respondent workman was driving the bus which is a heavy vehicle. It is also not in dispute that his bus met with an accident which dashed with the scooter in which the driver of the said scooter died on the spot. It is also not in dispute and as come on record that as the distance between the bus and the truck which was coming from the opposite side, was very narrow due to which the bus met with an accident and dashed with the scooter in which the scooter driver lost his life. Even if it can be said that the respondent workman was not fully responsible and / or negligent, however, it cannot be said that the respondent workman was not negligent at all. Once the misconduct of negligence is proved due to which there was a accident, it is ultimately for the disciplinary authority to impose the punishment unless it is found to be shockingly disproportionate. There is no specific finding given by the Industrial Tribunal that the punishment

imposed by the disciplinary authority is shockingly disproportionate. Under the circumstances, the Industrial Tribunal ought not to have exercised the powers under Section-11-A of the Industrial Disputes Act in the facts and circumstances of the case. It is required to be noted that the earlier also, the respondent workman was punished for the similar type of misconducts and at this time his bus met with an accident with the scooter and the scooter driver lost his life. Considering the facts and circumstances of the case, it appears that the disciplinary authority itself has taken lenient view in not dismissing the respondent workman and imposing the punishment of withholding of five increments with permanent future effect, which was not required to be interfered with by by the Industrial Tribunal while exercising the powers under Section-11-A of the Industrial Disputes Act. Under the circumstances, exercise of powers by the Industrial Tribunal, Vadodara can be said to be exceeding the jurisdiction and not acting and exercising the powers judiciously and under the circumstances, judgment and award requires to be quashed and set aside.

7. For the reasons stated hereinbove, the petition succeeds. The judgment and award passed by the Industrial Tribunal, Vadodara dated 29.5.2004 passed in Reference (IT) No.168 of 2001 is hereby quashed and set aside. The order of punishment imposed by the disciplinary authority is restored.

8. Rule is made absolute to the aforesaid extent, however, there will be no order as to costs.

[M.R.Shah, J.]

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